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DOE REVIEW COMPLETED

25 MAY 1962

MEMORANDUM FOR: Deputy Director of Central Intelligence
 THROUGH : Deputy Director (Support) *Permer 18 May 62*
 SUBJECT : Revision of Atomic Energy Commission Security Program

1. This memorandum is for the information of the DDCI.
2. Since sending you my memorandum of 11 May, I have received copies of the AEC regulations which received newspaper publicity regarding AEC's extension to their employees of the same rights held by their contractors' employees.
3. Our review of the AEC regulations leads to our belief that the revised regulations are not as significant as originally believed. The regulations contain a statement of principle that the employee whose clearance has been or is about to be revoked should have the right to confront his accusers. The regulations, however, recognize the interests of national security by also providing for the following:
 - a. The informant need not be identified when he is a confidential informant collecting information for the Government and disclosure of his identity would be substantially harmful to the national interest;
 - b. When the Commission believes national security interests require that the information from an informant must be considered but that the informant cannot be asked to testify and be cross-examined because of death or illness or because of some other reason "determined by the Commission to be good and sufficient", the identity of the informant may be withheld or his information considered without confrontation or cross-examination.

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4. The AEC regulation is almost identical in its wording with key portions of Executive Order 10865 which established the Department of Defense Industrial Security Program. Both the AEC regulations and Executive Order 10865 contain the same key provisions as a bill introduced in the House of Representatives in April 1962 by Congressman Walter which would revise the Internal Security Act to cover the Defense Industrial Security Program.

5. The recent act of AEC does not represent an entirely new security philosophy in Government. The act of extension, however, did address the problem more specifically than do the provisions of Executive Order 10450 which applies only to Government employees. This Order and implementing instructions issued by the Attorney General and the Civil Service Commission contain the following general features:

- a. A Government employee must be told that his clearance is being or has been revoked in a written statement as specific and detailed as security considerations permit;
- b. A Government employee has the right to participate in a hearing, to be represented by counsel, and to cross-examine witnesses testifying in his presence;
- c. Boards are to permit "reasonable cross-examination";
- d. The Board hearing an employee's case must take into consideration the facts that an employee may be handicapped in his defense by the non-disclosure of confidential information or by his inability to cross-examine confidential informants.

6. The provisions of Executive Order 10450 are included in Agency Regulations. We do not follow Executive Order 10450, however, in our clearance or clearance-denial processes, it having been determined to be in Agency interests to follow procedures established by the DCI under his authority in Section 102c of the National Security Act of 1947.

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Sherwood Edwards
Director of Security

Attachment:
AEC Regulations

cc: DD/S

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Notice of Rulemaking

TITLE 10 - ATOMIC ENERGY

CHAPTER I - ATOMIC ENERGY COMMISSION

**PART 4 - CRITERIA AND PROCEDURES FOR DETERMINING
ELIGIBILITY FOR SECURITY CLEARANCE**

**PART 10 - CRITERIA AND PROCEDURES FOR DETERMINING ACCESS
TO RESTRICTED DATA OR DEFENSE INFORMATION WITHIN
INDUSTRY**

In order to establish uniform procedures for determining the eligibility for access to Restricted Data or defense information under the Government and industrial security programs of the AEC, the Commission is revoking 10 CFR Part 4, "Criteria and Procedures for Determining Eligibility for Security Clearance," and issuing the following amendments to 10 CFR Part 10, "Criteria and Procedures for Determining Access to Restricted Data or Defense Information Within Industry." The amendments to 10 CFR Part 10 establish the criteria and procedures for resolving questions concerning the eligibility of individuals who are employed by or applicants for employment with AEC contractors, agents, access permittees, and licensees of the AEC, individuals who are AEC employees or applicants for AEC employment, and other persons designated by the General Manager of the Atomic Energy Commission, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, or for access to defense information, and are published to implement Executive Orders 10865, 25 F.R. 1583 (February 24, 1960), and 10450, 18 F.R. 2489 (April 27, 1954).

Because these regulations relate to the performance of AEC functions as described in section 4(2) of the Administrative Procedure Act of 1946, 5 U.S.C. section 1003(2), the Commission has found that general notice of proposed rulemaking and public procedure thereon are not required and that good cause exists why these rules should be made effective immediately without the customary period of prior notice.

Because of the important nature of the regulations contained herein, the Commission invites written comments from interested members of the public. These comments should be mailed to the General Counsel, U.S. Atomic Energy Commission, Washington 25, D.C.

Pursuant to the Administrative Procedure Act, the following rules are published as a document subject to codification, to be effective immediately upon publication in the Federal Register.

1. 10 CFR Part 4, "Criteria and Procedures For Determining Eligibility For Security Clearance," is hereby revoked.

2. 10 CFR Part 10 is amended so that the title thereof shall read as follows:

"Criteria and Procedures For Determining Eligibility For Access To Restricted Data Or Defense Information."

3. 10 CFR Part 10 is amended so that the first paragraph of the Preamble thereof shall read as follows:

"The following regulations of the Commission establishing the criteria and procedures for resolving questions concerning the eligibility of individuals who

are employed by or applicants for employment with AEC contractors, agents, access permittees, and licensees of the AEC, individuals who are AEC employees or applicants for AEC employment, and other persons designated by the General Manager of the Atomic Energy Commission, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, or for access to defense information, are published to implement Executive Orders 10865, 25 F.R. 1583 (February 24, 1960), and 10450, 18 F.R. 2489 (April 27, 1954)."

4. 10 CFR Part 10 is amended so that the title in the index preceding Section 10.10 shall read as follows:

"Criteria For Determining Eligibility For Access To Restricted Data or Defense Information."

5. 10 CFR Part 10, Section 10.1 is amended to read as follows:

"§ 10.1 Purpose. This part establishes the criteria, procedures and methods for resolving questions concerning the eligibility of individuals who are employed by or applicants for employment with AEC contractors, agents, access permittees, and licensees of the AEC, individuals who are AEC employees or applicants for AEC employment, and other persons designated by the General Manager of the AEC, for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, or for access to defense information, and is published to implement Executive Order 10865, 25 F.R. 1583 (February 24, 1960), and 10450, 18 F.R. 2489 (April 27, 1954)."

6. 10 CFR Part 10, Section 10.2 is amended so that paragraph (c) thereof is redesignated as paragraph (d), and the following new paragraph (c) is inserted:

"(c) Employees (including consultants) of, and applicants for employment with, the AEC."

7. 10 CFR Part 10, Section 10.3 which sets forth Section 145 of the Atomic Energy Act of 1954, as amended, is hereby amended by deleting subsections (d), (e), and (f), redesignating subsection (c) as subsection (d) and subsection (g) as subsection (h) and adding the following subsection:

"(c) In lieu of the investigation and report to be made by the Civil Service Commission pursuant to subsection (b) of this section, the Commission may accept an investigation and report on the character, associations, and loyalty of an individual made by another Government agency which conducts personnel security investigations, provided that a security clearance has been granted to such individual by another Government agency based on such investigation and report.

"(e) If the President deems it to be in the national interest he may from time to time determine that investigations of any group or class which are required by subsections (a), (b), and (c) of this section be made by the Federal Bureau of Investigation.

"(f) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, a majority of the members of

the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation, and reports required by such provisions shall be made by the Federal Bureau of Investigation.

"(g) The Commission shall establish standards and specifications in writing as to the scope and extent of investigations, the reports of which will be utilized by the Commission in making the determination, pursuant to subsections (a), (b), and (c) of this section, that permitting a person access to Restricted Data will not endanger the common defense and security. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted."

8. 10 CFR Part 10, Paragraph 10.5 (a) is amended to read as follows:

"(a) 'Access authorization' means an administrative determination that an individual (including a consultant) who is employed by or an applicant for employment with AEC contractors, agents, access permittees and licensees of the AEC is eligible for access to Restricted Data or defense information; and an individual (including a consultant) who is an AEC employee or applicant for AEC employment and

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other persons designated by the General Manager of the
Atomic Energy Commission is eligible for security clearance.

9. 10 CFR Part 10, Section 10.20 is amended to read as
follows:

"§ 10.20 Purpose of the Procedures. These procedures
establish methods for the conduct of Personnel Security
Board hearings and administrative review of questions
concerning an individual's eligibility for access
authorization pursuant to the Atomic Energy Act of 1954,
as amended, and Executive Orders 10450 and 10865, when it
has been determined that such questions cannot be
favorably resolved by interview or other investigation."

10. 10 CFR Part 10, Paragraph 10.26(c) is amended to read
as follows:

"The personnel of the Board shall be selected from a
panel of individuals possessing the highest degree of
integrity, ability, and good judgment. Such panel may
include employees of the AEC or its contractors but no
employee of an AEC contractor shall serve as a member of a
Personnel Security Board hearing the case of an employee of,
or an applicant for employment with, that contractor; nor
shall any employee of the AEC serve as a member of a
Personnel Security Board hearing the case of an employee
of, or an applicant for employment with, the AEC."

Dated at Germantown, Maryland this 30 ~~th~~ day of April
1962.

For the Atomic Energy Commission

Woodford B. McCool
Woodford B. McCool
Secretary

CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR DEFENSE INFORMATION WITHIN INDUSTRY

ATOMIC ENERGY COMMISSION

(Reprinted from Federal Register July 12, 1960)

TITLE 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR DEFENSE INFORMATION WITHIN INDUSTRY

The following regulations of the Commission establishing the criteria and procedures for resolving questions concerning the eligibility of an individual who is not an AEC employee or applicant for AEC employment for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended, or for access to defense information, are published to implement Executive Order 10865, 25 F.R. 1583 (February 24, 1960). It should be noted that these rules relate to personnel employed by or applicants for employment with AEC contractors, agents, access permittees, and licensees of the AEC, while the rules contained in Part 4 of the Atomic Energy Commission's rules and regulations relate to criteria and procedures for resolving questions concerning the eligibility of an individual for security clearance for AEC employment under the Atomic Energy Act of 1954, as amended.

Because these regulations relate to the performance of AEC functions as described in section 4(2) of the Administrative Procedure Act of 1946, 5 U.S.C. section 1003(2), the Commission has found that general notice of proposed rulemaking and public procedure thereon are not required and that good cause exists why these rules should be

made effective immediately without the customary period of prior notice.

Because of the important nature of the regulations contained herein, the Commission invites written comments from interested members of the public. These comments should be mailed to the General Counsel, U.S. Atomic Energy Commission, Washington 25, D.C.

Pursuant to the Administrative Procedure Act, the following rules are published as a document subject to codification, to be effective immediately upon publication in the *FEDERAL REGISTER*.

GENERAL PROVISIONS

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CRITERIA FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR DEFENSE INFORMATION WITHIN INDUSTRY

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- 10.85 Terminations.
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AUTHORITY: §§ 10.1 to 10.88 issued under sec. 101, 48 Stat. 948, as amended; 42 U.S.C. 2201.

GENERAL PROVISIONS

§ 10.1 Purpose.

This part establishes the criteria, procedures, and methods for resolving questions concerning the eligibility of an individual for access to Restricted Data pursuant to the Atomic Energy Act of 1954, as amended. The appropriate provisions of this part are also to be used to the extent the Commission has responsibilities under Executive Order 10865, 25 F.R. 1583 (February 24, 1960).

§ 10.2 Scope.

The criteria and procedures outlined in this part shall be used in those cases in which there are questions of eligibility for AEC access authorization involving:

- (a) Those employees (including consultants) of, and those applicants for employment with, contractors and agents of the Atomic Energy Commission;
- (b) Access permittees and licensees of the AEC and their employees (including consultants) and applicants for employment; and
- (c) Those other persons designated by the General Manager of the Atomic Energy Commission.

§ 10.3 Reference.

The pertinent sections of the Atomic Energy Act of 1954 are as follows:

Sec. 141. *Policy.* It shall be the policy of

the Commission to control the dissemination and disclosure of Restricted Data in such a manner as to assure the common defense and security.

Sec. 145. **Restriction.** (a) No arrangement shall be made under section 51, no contract shall be made or continued in effect under section 41, and no license shall be issued under section 103 or 104, unless the person with whom such arrangement is made, the contractor or prospective contractor, or the prospective licensee agrees in writing not to permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(b) Except as authorized by the Commission or the General Manager upon a determination by the Commission or General Manager that such action is clearly consistent with the national interest, no individual shall be employed by the Commission nor shall the Commission permit any individual to have access to Restricted Data until the Civil Service Commission shall have made an investigation and report to the Commission on the character, associations, and loyalty of such individual, and the Commission shall have determined that permitting such person to have access to Restricted Data will not endanger the common defense and security.

(c) In the event an investigation made pursuant to subsections (a) and (b) of this section develops any data reflecting that the individual who is the subject of the investigation is of questionable loyalty, the Civil Service Commission shall refer the matter to the Federal Bureau of Investigation for the conduct of a full field investigation, the results of which shall be furnished to the Civil Service Commission for its information and appropriate action.

(d) If the President deems it to be in the national interest, he may from time to time cause investigations of any group or class which are required by subsections (a) and (b) of this section to be made by the Federal Bureau of Investigation instead of by the Civil Service Commission.

(e) Notwithstanding the provisions of subsections (a) and (b) of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity and upon such certification the investigation and reports required by such provisions shall be made by the Federal Bureau of Investigation instead of by the Civil Service Commission.

(f) The Commission shall establish standards and specifications in writing as to the scope and extent of investigations to be made by the Civil Service Commission pursuant to subsections (a) and (b) of this section. Such standards and specifications shall be based on the location and class or kind of work to be done, and shall, among other considerations, take into account the degree of importance to the common defense and security of the Restricted Data to which access will be permitted.

(g) Whenever the Congress declares that a state of war exists, or in the event of a national disaster due to enemy attack, the Commission is authorized during the state of war or period of national disaster due to enemy attack to employ individuals and to permit individuals access to Restricted Data pending the investigation report, and determination required by section 145b, to the

extent that it is required to prevent impairment of its activities in furtherance of the common defense and security.

Sec. 161. **General provisions.** In the performance of its functions the Commission is authorized to:

(a) Establish advisory boards to advise with and make recommendations to the Commission on the legislation, policies, administration, research and other matters: Provided, That the Commission issues regulations setting forth the scope, procedure, and limitations of the authority of each such board.

(b) Make such studies and investigations, obtain such information, and hold such meetings or hearings as the Commission may deem necessary or proper to assist it in the administration or enforcement of this act, or any regulations or orders issued thereunder. For such purposes the Commission is authorized to administer oaths and affirmations, and by subpoena to require any person to appear and testify, or to appear and produce documents, or both, at any designated place. No person shall be excused from complying with any requirements under this paragraph because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893, shall apply with respect to any individual who specifically claims such privilege. Witnesses subpoenaed under this subsection, shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(c) Delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57a(3), 61, 102 (with respect to the finding of a practical value), 108, 123, 145b (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145c, and 161a.

§ 10.4 Policy.

It is the policy of the Atomic Energy Commission to carry out its responsibility for the security of the atomic energy program in a manner consistent with traditional American concepts of justice. To this end, the Commission has established criteria for determining eligibility for access authorization and will afford those individuals described in § 10.2 the opportunity for administrative review of questions concerning their eligibility for access authorization.

§ 10.5 Definitions.

As used in this part:

(a) "Access authorization" means an administrative determination that an individual is eligible for access to Restricted Data or defense information;

(b) "Personnel Security Board" means an advisory board appointed by the Manager of Operations and consisting of three members, one of whom shall be designated as Chairman;

(c) "Hearing Counsel" means an AEC attorney assigned to prepare and conduct Personnel Security Board hearings;

(d) "AEC Personnel Security Review Board" means an advisory appeal board located in Washington, D.C., consisting

of three members, one of whom shall be designated as Chairman;

(e) "Commission" means the commission of five members or a quorum thereof sitting as a body, as provided by section 21 of the Atomic Energy Act of 1954, as amended.

CITERIA FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR DEFENSE INFORMATION

§ 10.10 Application of the criteria.

(a) The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would endanger the common defense and security and would be clearly consistent with the national interest.

(b) To assist in making these determinations, on the basis of all the information in a particular case, there are set forth in this part a number of specific types of derogatory information. These criteria are not exhaustive but contain the principal types of derogatory information which create a question as to the individual's eligibility for access authorization. While there must necessarily be adherence to such criteria, the Commission is not limited thereto, nor precluded from exercising its judgment that information or facts in a case under its cognizance are derogatory although at variance with, or outside the scope of, the stated categories. These criteria are subject to continuing review and may be revised from time to time as experience and circumstances may make desirable.

(c) When the reports of investigation of an individual contain information reasonably tending to establish the truth of one or more of the items in the criteria, such information shall be regarded as substantially derogatory and shall create a question as to his eligibility for access authorization. Managers of Operations shall refer cases involving substantially derogatory information to the Director, Division of Security, AEC. The Director, Division of Security, AEC, may authorize the granting of access authorization on the basis of the information in the case or may authorize the conduct of an interview with the individual and, on the basis of such interview and such other investigation as he deems appropriate, may authorize the granting of access authorization. Otherwise, a question concerning the eligibility of an individual for access authorization shall be resolved in accordance with the procedures set forth in § 10.20 et seq.

(d) In resolving a question concerning the eligibility or continued eligibility of an individual for access authorization, the following principles shall be applied by the Board:

(1) Where there are grounds sufficient to establish a reasonable belief as to the truth of one or more of the items in Category "A", this shall be the basis for a recommendation for denying or revok-

ing access authorization if not satisfactorily rebutted by the individual.

(3) Where there are grounds sufficient to establish a reasonable belief as to the truth of one or more of the items in Category "B", the extent of activities, the period in which such activities occurred, the length of time which has since elapsed, and the attitudes and convictions of the individual shall be considered in determining whether the recommendation will be adverse or favorable.

§ 10.11 Derogatory information.

(a) *Category "A" derogatory information.* Category "A" includes those cases in which the individual or his spouse has:

(1) Committed or attempted to commit, or aided, or abetted another who committed or attempted to commit, any act of sabotage, espionage, treason or sedition;

(2) Knowingly established an association with espionage or sabotage agents of a foreign nation; with individuals reliably reported as suspected of espionage or sabotage; with representatives of foreign nations whose interests may be inimical to the interests of the United States, with traitors, seditionists, anarchists, or revolutionists;

(3) Held membership in any organization or group designated by the Attorney General pursuant to Executive Order 10450, as amended, provided the individual did not withdraw from such membership when the organization was so identified, or did not otherwise establish his rejection of its subversive aims; or, prior to the declaration by the Attorney General, participated in the activities of such an organization in a capacity where he should reasonably have had knowledge as to the subversive aims of the organization and did not establish his rejection of its subversive aims. (If an organization has been removed from the Attorney General's list, membership in the organization after such removal shall not be considered as Category "A" derogatory information, but may be considered as Category "B" derogatory information.)

(4) Publicly or privately advocated revolution by force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means;

Category "A" also includes those cases in which the individual has:

(5) Deliberately omitted significant information from or falsified his Personnel Security Questionnaire or Personal History Statement concerning a significant matter;

(6) Wilfully violated or disregarded security regulations to a degree which would endanger the common defense and security; or intentionally disclosed classified information to any person not authorized to receive it;

(7) Any mental illness of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the

individual;

(8) Been convicted of crimes indicating habitual criminal tendencies;

(9) Been, or is, a user of drugs habitually, without adequate evidence of rehabilitation.

(b) *Category "B" derogatory information.* In evaluating items under this category, the extent of the activities, the period in which such activities occurred, the length of time which has since elapsed, and the attitudes and convictions of the individual shall be considered. Category "B" includes those cases in which the individual or his spouse has:

(1) Advocated totalitarian, fascist, communist or other subversive political ideologies and has not subsequently established his rejection of them.

(2) Associated with persons falling within the provisions of Category "B", subparagraph (1) of this paragraph, when the individual himself did not establish his rejection of such ideologies. (Ordinarily this will not include chance or casual meetings nor contacts limited to normal business or official relations).

(3) Affiliated with any organization or group designated in Category "A", paragraph (a) (3), of this section, provided the individual did not discontinue such affiliation when the organization was so identified or did not otherwise establish his rejection of its subversive aims;

(4) Associated with any person falling within the provisions of Category "A", paragraph (a) (3), of this section. Provided the individual did not discontinue such association when the organization was so identified or did not otherwise establish his rejection of its subversive aims. (Ordinarily this will not include chance or casual meetings nor contacts limited to normal business or official relations.)

(5) Parent(s), brother(s), sister(s), spouse, or offspring residing in a nation whose interests may be inimical to the interests of the United States, or in satellites or occupied areas thereof (to be evaluated in the light of the risk that pressure applied through such close relatives could force the individual to reveal sensitive information or perform an act of sabotage); Category "B" also includes those cases in which the individual:

(6) Refuses to serve in the Armed Forces when such refusal cannot be clearly shown to be due to religious convictions;

(7) Has been grossly careless in failing to protect or safeguard any Restricted Data or defense information;

(8) Has abused trust, has been dishonest, or has engaged in infamous, immoral or notoriously disgraceful conduct without adequate evidence of reformation;

(9) Is a sexual pervert or homosexual;

(10) Is a user of alcohol habitually and to excess, or has been such without adequate evidence of rehabilitation;

(11) Refuses, upon the ground of constitutional privilege against self-incrimination, to testify before a Congressional

Committee regarding charges of his alleged disloyalty or other misconduct.

PROCEDURES

§ 10.20 Purpose of the procedures.

These procedures establish methods for the conduct of personnel security board hearings and administrative review of questions concerning an individual's eligibility for access authorization pursuant to the Atomic Energy Act of 1954, as amended, and Executive Order 10808, when it has been determined that such questions cannot be favorably resolved by interview or other investigation.

§ 10.21 Suspension of access authorization.

In those cases where information is received which raises a question concerning the continued eligibility of an individual for AEC access authorization, the Manager of the office concerned shall forward to the General Manager, via the Director, Division of Security, AEC, his recommendation as to whether the individual's access authorization should be suspended pending the final determination resulting from the operation of the procedures provided in this part. In making this recommendation the Manager shall consider such factors as the seriousness of the derogatory information developed, the possible access of the individual to classified information, and the individual's opportunity by reason of his position to commit acts adversely affecting the national security. The access authorization of an individual shall not be suspended except by direction of the General Manager.

§ 10.22 Notice to individual.

A notification letter, prepared by the Division of Security, AEC, approved by the Office of the General Counsel, and signed by the Manager of Operations, shall be presented to each individual whose eligibility for access authorization is in question. Where practicable, such letter shall be presented to the individual in person. The letter shall state:

(a) That reliable information in possession of the Commission has created a substantial doubt concerning the individual's eligibility for access authorization;

(b) The information which creates a substantial doubt regarding the individual's eligibility for access authorization shall be as comprehensive and detailed as the national security permits;

(c) In the event the individual desires a Board hearing he must within twenty days of the date of receipt of the notification letter indicate in writing to the Manager from whom he receives such letter that he wishes a hearing before a Personnel Security Board;

(d) That within twenty days of the date of receipt of the notification letter, the individual shall file with the Manager from whom he received such letter his written answer under oath on affirmation, to each item of reported information,

mation which raises the question of his eligibility for access authorization:

(e) That, if the individual so requests, a hearing will be scheduled before a Personnel Security Board with due regard for the convenience and necessity of the parties or their representatives for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization;

(f) That, if the individual requests a hearing, he will be notified in writing of the membership of a Personnel Security Board when it is appointed by the Manager;

(g) That the individual will have the right to appear personally before a Personnel Security Board, and present evidence in his own behalf, through witnesses, or by documents, or both, and subject to the limitations set forth in § 10.27(f), be present during the entire hearing and be accompanied, represented and advised by counsel of his own choosing;

(h) That the individual's failure to file a written request for a hearing before a Personnel Security Board, in accordance with paragraphs (c) and (d) of this section, will be considered as a relinquishment by him of the opportunity of availing himself of the hearing and review procedure provided in this part, and that in such event a recommendation as to the final action to be taken will be made by the Manager of Operations and submitted to the General Manager for his decision on the basis of the information in the case without reference to a Personnel Security Board;

(i) His access authorization status until further notice;

(j) The name of the designated AEC official to contact for any further information desired.

§ 10.23 Additional information.

A copy of this part shall be given to the individual with the notification letter.

§ 10.24 Failure of individual to request a hearing.

(a) In the event the individual fails, within the prescribed time, to file a written request for a hearing before a Personnel Security Board, pursuant to § 10.22, a recommendation as to the final action to be taken shall be made by the Manager of Operations to the General Manager on the basis of the information in the case;

(b) The Manager of Operations may for good cause shown, at the request of the individual, extend the time for filing a written request for a hearing or for filing a written answer to the matters contained in the notification letter.

§ 10.25 Selection of AEC Hearing Counsel.

(a) Upon receipt from the individual of his written answer to the notification letter, signifying his desire to appear before a Personnel Security Board and answering under oath or affirmation the allegations contained in the notification

letter, an AEC attorney shall forthwith be assigned to act as Hearing Counsel;

(b) Hearing Counsel shall, prior to the scheduling of the Board hearing, review the information in the case and shall request the presence of witnesses and the production of physical evidence in accordance with the provisions of paragraphs (m), (n), (o), and (p) of § 10.27. When the presence of a witness is deemed by the Hearing Counsel to be necessary or desirable to a proper determination of the issues before the Board, the Manager shall make arrangements by subpoena or otherwise for such witnesses to appear, be confronted by the individual, and be subject to examination and cross-examination;

(c) Hearing Counsel is authorized to consult directly with the individual if he is not represented by counsel, or if so represented with his counsel or representative, for purposes of reaching mutual agreement upon arrangements for an expeditious hearing of the case. Such arrangements may include clarification of issues, and stipulations with respect to testimony and the contents of documents and other physical evidence. Such stipulations when entered into shall be binding upon the individual and the Atomic Energy Commission for the purposes of this part. Prior to such consultation the Hearing Counsel shall advise the individual of his right to Counsel or other representation and of the possibility that any statements made by the individual to the Hearing Counsel may be used in subsequent proceedings;

(d) The individual is responsible for producing witnesses in his own behalf or presenting other proof before the board to support his answer and defense to the allegations contained in the notification letter. When requested, however, Hearing Counsel shall assist him to the extent practicable and necessary. In the Hearing Counsel's sound discretion he may request the Manager of Operations to arrange for the issuance of subpoenas for witnesses to attend the hearing in the individual's behalf, or for the production of specific documents or other physical evidence, provided a showing of the necessity for such assistance has been made.

§ 10.26 Appointment of Personnel Security Boards.

(a) Upon receipt of advice from the Hearing Counsel that all arrangements for an expeditious hearing have been completed, the Manager shall forthwith appoint a Personnel Security Board consisting of three members, one of whom shall be designated as the Chairman of the Personnel Security Board;

(b) The personnel of the Board, when practicable as determined by the Manager, shall consist of at least one member who is an attorney and one member who is familiar with the general field of work of the individual;

(c) The personnel of the Board shall be selected from a panel of individuals possessing the highest degree of integrity, ability, and good judgment. Such panels

may include employees of the AEC or its contractors but no employee of an AEC contractor shall serve as a member of a Personnel Security Board hearing the case of an employee of, or an applicant for employment with, that contractor;

(d) All persons serving as members of Personnel Security Boards shall have an AEC "Q" clearance;

(e) No person shall serve as a member of a Personnel Security Board who has prejudged the case to be heard; who possesses information that would make it embarrassing to render impartial recommendations or advice; or who for bias or prejudice generated for any reason would be unable to render fair and impartial recommendations or advice;

(f) Immediately upon the appointment of a Personnel Security Board, the Manager will notify the individual of the identity of the members of the Personnel Security Board and of his right to challenge any member for cause, such challenge or challenges, accompanied by the reasons therefor, to be submitted to the Manager within seventy-two hours of the receipt of the notice;

(g) In the event that the individual challenges a member or members of the Personnel Security Board, the justification of the action of the individual shall be determined by the Manager. Where the challenge of the individual is sustained, the Manager shall forthwith appoint such new members as required to constitute a full Personnel Security Board and notify the individual. The individual shall have the right to challenge such new members for cause and such challenge shall be dealt with in the same manner as an original challenge. The Manager shall also notify the individual of his rejection of any challenge. The Personnel Security Board shall convene as soon as is reasonably practicable;

(h) The Manager of Operations shall notify the individual in writing, at least one week in advance, of the date, hour, and place the Personnel Security Board will convene. In the event the individual fails to appear at the time and place specified, a recommendation as to the final action to be taken shall be made by the Manager of Operations to the General Manager on the basis of the information in the case. However, the Manager of Operations may for good cause shown, at the request of the individual, permit the individual to appear before a Personnel Security Board at a newly scheduled date, hour, and place.

§ 10.27 Conduct of proceedings.

(a) The proceedings shall be conducted by the Chairman of the Personnel Security Board in an orderly, impartial, and decorous manner with every effort made to protect the interests of the Government and of the individual and to arrive at the truth. In no case will undue delay be tolerated nor will the individual be hampered by unduly restricting the time necessary for proper preparation and presentation. In performing their duties, the members of the Board shall always bear in mind and

the Board shall always bear in mind and make clear to all concerned that the proceeding is an administrative hearing and not a trial;

(b) The proceedings shall be open only to duly authorized representatives of the staff of the Atomic Energy Commission, the individual, his counsel, and such persons as may be officially authorized by the Board. Witnesses shall not testify in the presence of other witnesses;

(c) 1. Hearing Counsel shall examine and cross-examine witnesses and otherwise assist the Board in such a manner as to bring out a full and true disclosure of all facts, both favorable and unfavorable, having a bearing on the issues before the Board. In performing his duties, he shall avoid the attitude of a prosecutor and shall always bear in mind that the proceeding is an administrative hearing and not a trial;

2. Hearing Counsel shall not participate in the deliberations of the Board, and shall express no opinion to the Board concerning the merits of the case. He shall also advise the individual of his rights under these procedures when the individual is not represented by counsel of his own choosing;

(d) The Board may ask the individual, AEC representatives, and other witnesses any supplemental questions which the Board deems appropriate to assure the fullest possible disclosure of relevant and material facts. The proponent of a witness shall conduct the direct examination of that witness;

(e) During the course of the proceedings the Chairman shall rule in open session on all questions presented to the Board for its determination, subject to the objection of any member of the Board. In the event of an objection by any member of the Board, a majority vote of the Board shall be determinative and constitute the ruling of the Chairman. Voting may be either in open or closed session on all questions except recommendations to grant or deny access authorization, which shall be in closed session;

(f) In the event it appears in the course of the hearing that Restricted Data or defense information may be disclosed, it shall be the duty of the Chairman to assure that disclosure is not made to persons who are not authorized to receive it;

(g) The Board shall admit in evidence any matters either oral or written which are material, relevant and competent in determining the issues involved, including the testimony of responsible persons concerning the integrity of the individual. The utmost latitude shall be permitted with respect to relevancy, materiality, and competency. Every reasonable effort shall be made to obtain the best evidence available. Hearsay evidence may for good cause shown be admitted without regard to technical rules of admissibility and accorded such weight as the circumstances warrant;

(h) Testimony of the individual and witnesses shall be given under oath or

affirmation, and the individual and witnesses shall be subject to cross-examination. Attention of the individual and the witness shall be invited to 18 U.S.C. 1001 and 18 U.S.C. 1621;

(i) The individual shall be afforded the opportunity of testifying in his own behalf;

(j) The Board shall endeavor to obtain all the facts that are reasonably available in order for it to arrive at its recommendations. If, prior to or during the proceeding, in the opinion of the Board the allegations in the notification letter are not sufficient to cover all matters into which inquiry should be directed, the Board shall recommend to the Manager concerned that, in order to give more adequate notice to the individual, the notification letter should be amended. Any amendment shall be made with the concurrence of the Director, Division of Security, AEC, and the Office of the General Counsel. If, in the opinion of the Board, the circumstances of such an amendment may involve an undue hardship to the individual, because of limited time to answer the new allegations in the notification letter, an appropriate adjournment shall be granted upon the request of the individual;

(k) Unless permitted by paragraphs (l), (m), (n), (o), and (p) of this section, the record may contain no information adverse to the individual on any controversial issue unless (1) the information or its substance has been made available to the individual and he offers no objection to its presentation; or (2) the information or its substance is made available to him and the individual is afforded an opportunity to cross-examine the person providing the information. Information whose admission is not prohibited by this paragraph, or by any other provision of this part, may be received and made a part of the record and may be considered by the Board or officials charged with making determinations under this part;

(l) A written or oral statement of a person relating to the characterization in the notification letter of any organization or person other than the individual may be received and considered by the Board without affording the individual an opportunity to cross-examine the person making the statement on matters relating to the characterization of such organization or person, provided the individual is given notice that it has been received and may be considered by the Board, and is informed of its contents provided such is not prohibited by 10.27(f);

(m) The individual shall be afforded an opportunity to cross-examine persons who have made oral or written statements adverse to the individual relating to a controversial issue except that any such statement may be received and considered by the Board without affording such opportunity in either of the following circumstances:

(1) The head of the department supplying the statement certifies that the

person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest;

(2) The Commission or its special designee for that particular purpose has preliminarily determined, after considering information furnished by the investigative agency as to the reliability of the person and the accuracy of the statement concerned, that the statement concerned appears to be reliable and material, and the Commission or such special designee has determined that failure of the Board to receive and consider such statement would, in view of the access to Restricted Data or defense information sought, be substantially harmful to the national security and that the person who furnished the information cannot appear to testify (i) due to death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the individual, or (ii) due to some other cause determined by the Commission to be good and sufficient.

(n) Whenever procedures under paragraph (m) (1) or (2) of this section are used (1) the individual shall be given a summary of the information which shall be as comprehensive and detailed as the national security permits, and (2) appropriate consideration shall be accorded to the fact that the individual did not have an opportunity to cross-examine such person or persons;

(o) Records compiled in the regular course of business, or other physical evidence other than investigative reports, may be received and considered subject to rebuttal without authenticating witnesses, provided that such information has been furnished to the AEC by an investigative agency pursuant to its responsibilities in connection with assisting the Commission to safeguard Restricted Data or defense information;

(p) Records compiled in the regular course of business, or other physical evidence other than investigative reports, relating to a controversial issue which, because they are classified, may not be inspected by the individual, may be received and considered provided that;

(1) The Commission or its special designee for that purpose has made a preliminary determination that such physical evidence appears to be material;

(2) The Commission or such designee has made a determination that failure to receive and consider such physical evidence would, in view of the access to Restricted Data or defense information sought, be substantially harmful to the national security; and

(3) To the extent that national security permits, a summary or description of such physical evidence shall be made available to the individual. In every such case, information as to the authenticity and accuracy of such physical evidence furnished by the investigative agency shall be considered.

(q) The Board may request the Man-

ager to arrange for additional investigation on any points which are material to the deliberations of the Board and which the Board believes need extension or clarification. In this event, the Board shall set forth in writing those issues upon which more evidence is requested, identifying where possible persons or sources from which evidence should be sought. The Manager shall make every effort through appropriate sources to obtain additional information upon the matters indicated by the Board;

(r) A written transcript of the entire proceedings shall be made by a person possessing appropriate AEC clearance and, except for portions containing Restricted Data or defense information, a copy of such transcript shall be furnished the individual without cost.

§ 10.28 Recommendation of the Board.

(a) The Board shall carefully consider the record and the standards set forth herein. In reaching its determination the Board shall consider the demeanor of the witnesses who have testified before the Board, the probability or likelihood of the truth of their testimony, their credibility, the authenticity and accuracy of documentary evidence, or the lack of evidence upon some material points in issue. If the individual is, or may be, handicapped by the non-disclosure to him of confidential information or by lack of opportunity to cross-examine confidential informants, the Board shall take that fact into consideration. The Board may also consider as part of the record the individual's past employment in the atomic energy program, and the nature and sensitivity of the job he is or may be expected to perform. Possible impact of the loss of the individual's services upon the AEC program shall not be considered by the Board;

(b) The Board shall make specific findings based upon the record as to whether each of the allegations contained in the notification letter is true or false and the significance which the Board attaches to such allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings;

(c) The recommendation of the Board shall be predicated upon its findings. If, after considering all the factors in the light of the criteria set forth in this part, the Board is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant access authorization to the individual, it shall make a favorable recommendation; otherwise, it shall make an adverse recommendation;

(d) The recommendation of the Board shall be determined by a majority vote. In the event of a dissent from the majority, the recommendation of the minority member shall be made a matter of record together with a statement of the reasons leading to his conclusions. The recommendation of the Board shall be submitted to the Manager accompanied

by a statement of the reasons leading to the Board's conclusions.

§ 10.29 New evidence.

(a) In the event of the discovery of new evidence by the individual prior to final determination of the individual's eligibility for access authorization, such evidence shall be submitted by the individual or his representative to the Manager of Operations from whom he received his notification letter;

(b) The Manager of Operations with the advice of Hearing Counsel shall review the application for the presentation of new evidence to ascertain its materiality and relevancy and further, that the individual or his representative is without fault in failing to present the evidence before. In the event it is determined that the new evidence should be received, the Manager of Operations shall:

(1) Refer the matter to the Personnel Security Board which had been appointed in the individual's case when the Manager of Operations has not yet transmitted the record to the General Manager. The Board receiving the application for the presentation of new evidence shall determine the form in which it shall be received, whether by testimony before the Board, by deposition, or by affidavit.

(2) In those cases where the Manager of Operations has forwarded the record to the General Manager, the application for presentation of new evidence shall be referred to the General Manager with appropriate comment and recommendations. In the event the General Manager determines that the new evidence should be received, he shall determine the form in which it shall be received, whether by testimony before a Personnel Security Board, by deposition, or by affidavit.

§ 10.30 Actions on the recommendations.

(a) The recommendations of the Board and any dissent therefrom shall be signed by the members of the Board as appropriate, and together with the record of the case, shall be transmitted with the least practicable delay to the Manager of Operations concerned;

(b) Upon receipt of the findings and recommendation of the Board, and the record, the Manager shall forthwith transmit it to the General Manager through the Director, Division of Security, AEC. In those cases where denial of access authorization is recommended by the Board, the Manager of Operations shall forward a statement concerning the effect which denial of access authorization would have upon the atomic energy program;

(c) The General Manager may return the record to the Manager for further proceedings by the Personnel Security Board with respect to specific matters designated by the General Manager;

(d) (1) In the event of a recommendation by the Board for a denial of access authorization, the individual shall be immediately notified in writing of

that fact by the General Manager, or his designee, and shall be informed of the Board's findings with respect to each allegation contained in the notification letter. The individual shall also be notified of his right to request a review of his case by the AEC Personnel Security Review Board and of his right to submit a brief in support his contentions. The request for a review shall be submitted to the General Manager within five days after the receipt of the notice. The brief shall be forwarded to the General Manager through the Director, Division of Security, AEC, not later than 10 days after receipt of such notice, unless such time is extended by the General Manager for good cause shown;

(2) Where the individual requests a review of the adverse recommendation, the General Manager shall forthwith send the record, with all findings and recommendations, to the Personnel Security Review Board;

(3) In the event the individual fails to request a review by the AEC Personnel Security Review Board of an adverse recommendation within the prescribed time, the final determination shall be made on the basis of the record with all findings and recommendations;

(e) (1) Where the Board has made a recommendation favorable to the individual and the General Manager proposes to transmit the record to the Personnel Security Review Board for its recommendation, the General Manager shall immediately cause the individual to be notified of that fact and of those matters contained in the notification letter concerning which he desires the advice of the Personnel Security Review Board. He shall further inform the individual that he may submit a brief concerning such matters for the consideration of the Personnel Security Review Board. Such brief shall be filed not later than 10 days from the receipt of the notice by the individual, unless extended for good cause shown. The brief shall be forwarded to the General Manager for transmission to the Personnel Security Review Board.

§ 10.31 Recommendations of the AEC Personnel Security Review Board.

(a) The AEC Personnel Security Review Board shall make its deliberations based upon the record, supplemented by such brief as the individual submits. The Personnel Security Review Board may request such additional briefs as it deems appropriate. In any case where the AEC Personnel Security Review Board determines that additional evidence or further proceedings are necessary, it may return the record to the General Manager with a recommendation that the case be remanded to the Manager of Operations for appropriate action;

(b) In its deliberations, the AEC Personnel Security Review Board shall make its findings and recommendations as to the eligibility of an individual for access authorization on the record supplemented by additional testimony or briefs.

as determined by the Board. Any elec-
tional testimony is taken by the Person-
nel Security Review Board a verbatim
transcript of such testimony shall be
made part of the record;

(o) The Personnel Security Review
Board shall not concern itself with the
possible impact of the loss of the Indi-
vidual's services upon the AEC program;

(d) After its deliberations, the AEC
Personnel Security Review Board shall
make its findings and recommendations
on the record in writing to the General
Manager.

§ 10.32 Action by the General Manager.

(a) The General Manager, on the basis
of the record accompanied by all recom-
mendations, shall then make a final
determination whether access authoriza-
tion shall be granted or denied, unless
the provisions of § 10.27 (m), (n), (o),
or (p) have been used, in which case
the decision to deny or revoke access
authorization may be made only by the
Commission;

(b) In making the determination as
to whether access authorization shall
be granted or denied, the General Man-
ager or Commission shall give due recog-
nition to the favorable as well as the un-
favorable information concerning the
individual and shall take into account
the value of the individual's services to
the atomic energy program and the op-
erational consequences of denial of
access authorization;

(c) In the event of an adverse deter-
mination the General Manager shall
notify the individual through the Man-
ager of Operations of his decision that
access authorization is being denied or
revoked and of his findings with respect
to each allegation contained in the notifi-
cation letter for transmittal to the
individual.

§ 10.33 Action by the Commission.

(a) Whenever an individual has not
been afforded an opportunity to confront
and cross-examine witnesses who have
furnished information adverse to the
individual under the provisions of § 10.27
(m), (n), (o), or (p) and an adverse
recommendation has been made by the
General Manager, the Commissioners
shall personally review the record and
determine whether access authorization
shall be granted, denied or revoked,
based upon the record;

(b) When the Commission determines
to deny or revoke access authorization
the individual will be notified through
the Manager of Operations of its de-
cision that access authorization is being
denied or revoked and of its findings with
respect to each allegation contained in
the notification letter for transmittal
to the individual;

(c) Nothing contained in these pro-
cedures shall be deemed to limit or affect
the responsibility and powers of the
Commission to deny or revoke access to
Restricted Data or defense information
if the security of the nation so requires.
Such authority may not be delegated and
may be exercised only when the Commis-

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sioner has determined that the procedures
described in § 10.27 (m), (n), (o), or (p)
cannot be invoked consistently with the
national security and such determina-
tion shall be conclusive.

§ 10.34 Reconsideration of cases.

(a) Where, pursuant to the proce-
dures set forth in §§ 10.20 to 10.33, the
General Manager or the Commission has
made a determination granting access
authorization to an individual, the indi-
vidual's eligibility for access authoriza-
tion shall be reconsidered only when
subsequent to the time of the prior hear-
ing, there is new substantially derogatory
information or a significant increase
in the scope or sensitivity of the Re-
stricted Data or defense information to
which the individual has or will have
access;

(b) Where, pursuant to these proce-
dures, the Commission or General Man-
ager has made a determination denying
access authorization to an individual, the
individual's eligibility for access au-
thorization may be reconsidered when
there is a bona fide offer of employment
requiring access to Restricted Data or
defense information and either material
and relevant new evidence, which the
individual and his representatives are
without fault in failing to present be-
fore, or convincing evidence of refor-
mation or rehabilitation. Requests for
reconsideration shall be submitted in
writing to the General Manager through
the Manager of Operations having juris-
diction over the position for which access
authorization is required. Such requests
shall be accompanied by an affidavit set-
ting forth in detail the information re-
ferred to above. The General Manager
shall cause the individual to be notified
as to whether his eligibility for access
authorization will be reconsidered and,
if so, the method by which such recon-
sideration will be accomplished;

(c) Where access authorization has
been granted to an individual by a Man-
ager of Operations without recourse to
the procedures set forth in §§ 10.20 to
10.33, the individual's eligibility for ac-
cess authorization shall be reconsidered
only in a case where subsequent to the
granting of the access authorization, new
substantially derogatory information has
been received or there is a significant
increase in the scope or sensitivity of the
Restricted Data or defense information
to which the individual has, or will have
access, and in any other case only with
specific prior approval of the Director,
Division of Security, AEC.

MISCELLANEOUS

§ 10.35 Terminations.

In the event the individual is no longer
an applicant for access authorization or
no longer requires access authorization
the procedures of this part shall be ter-
minated without a final determination
as to his eligibility for access authoriza-
tion.

§ 10.36 Attorney Representation.

In the event the individual is repre-
sented by an attorney or other such rep-
resentative, the individual shall file with
the AEC a document designating such
attorney or representative and authorizing
such attorney or representative to re-
ceive all correspondence, transcripts
and other documents pertaining to the
proceeding under this part.

§ 10.37 Certifications.

Whenever information is made a part
of the record under the exceptions au-
thorized by § 10.27 (m), (n), (o), and
(p), the record shall contain certificates
evidencing that the determinations re-
quired therein have been made.

§ 10.38 Washington Area cases.

In those cases which may arise in-
volving individuals within the Washing-
ton Area of AEC operations, an Assistant
General Manager designated by the Gen-
eral Manager shall discharge the func-
tions and responsibilities assigned to
Managers of Operations in these pro-
cedures.

Dated at Washington, D.C., this 1st
day of July 1960.

A. R. LUEDKE,
General Manager.

[F.R. Doc. 60-6400; Filed, July 11, 1960;
8:45 a.m.]

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ER-file

11 May 1962

Executive Registry

62-3186

MEMORANDUM FOR: Deputy Director of Central Intelligence

THROUGH: Deputy Director (Support) *Letter 11 May 6*

THROUGH: General Counsel

SUBJECT: Revision of Atomic Energy Commission
Security Program

1. This memorandum is for information as requested by the DDCI.

2. I have made inquiries of both the Federal Bureau of Investigation and the Atomic Energy Commission concerning the origin and background which brought about the changes in the security program of the Atomic Energy Commission as applied to its staff employees.

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It appears that the matter was handled by Mr. Neil Naiden, General Counsel, Atomic Energy Commission. This is believed by the FBI to have been cleared with an Assistant Attorney General (identity unknown). The change was put into effect without previous consultation or knowledge on the part of the FBI. The change was further made without consultation with the AEC Director of Security and came as a surprise to that officer.

3. What this change does is to place the 6,800 employees of AEC under the provisions of Executive Order 10865 rather than under the provisions of Executive Order 10450 as other departments and agencies are. As quoted in the press, EO 10865 is the Order applying to industrial personnel security review in the Government as a whole. There are some 110,000 industrial employees who come under the provisions of this Order for clearance procedures. While again in confidence, the FBI reports that there have only

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been six hearings in the Atomic Energy Commission in the last fifteen years and that the FBI thinks there will be so few requests for the identity of informants that there may be little or no problem. The FBI reports that they are "sitting tight" and do not intend to raise any issues in this matter at this time. [redacted]

25X1

[redacted] As quoted in the press (see Tab A attached) there are two exceptions which could be used by a department or agency if the information is from intelligence sources or if the use of it would be harmful to "national security".

4. I am sending this memorandum through the General Counsel for any further comment he may wish to make on this matter. I recommend that this Agency take no stand on the matter but keep abreast of any further developments or changes to this procedure on the part of agencies in the Intelligence Community. The actual AEC Regulation implementing this change has not yet been published. [redacted]

STAT

[redacted] Edwards
Director of Security

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Attach. - Tab A (w/orig. only)

Concur:
LAW

Distribution:

Orig. & 1 - Adse.
1 - DD/S
1 - General Counsel

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A

**A.E.C. to Let Aides
Confront Accusers
In Security Cases**

TUESDAY, MAY 1, 196

Special to The New York Times.

WASHINGTON, April 30 — The Atomic Energy Commission has become the first Federal unit to establish the principle that its employees and job applicants should have the right to confront accusers in security cases.

The commission's action extended to its own employees and job applicants protection that already was accorded, with a few exceptions, to employees of private contractors doing business with the Government.

The commission revoked the section of its rules and regulations relating to security clearance procedures for its own employees and job applicants and put those persons under the section covering clearance for employees of contractors. The unanimous action was taken Friday.

The commission's action could lead other Government agencies to extend the right of confrontation to their own employees.

Major Issue in Fifties

In the controversy over loyalty-security programs in the Nineteen Fifties, confrontation was a major issue. The practice of using confidential informants was attacked as an unfair barrier against getting at the truth. Investigative officials defended the practice as essential to obtaining and protecting security information.

On June 29, 1959, the Supreme Court struck down the Government security program covering employees of defense contractors. The court held, 8 to 1, that neither Congress nor the President had authorized a program in which suspects were denied the right to confront and cross-examine their accusers.

The court did not decide whether denial of the right of confrontation was constitutional. Nevertheless, Chief Justice Earl Warren, who wrote the majority opinion, used language that strongly suggested that the Constitution required some confrontation in security proceedings.

In early 1960, President

Continued on Page 19, Column 5

**A.E.C. LETS AIDES
QUERY ACCUSERS**

Continued From Page 1, Col. 6

Dwight D. Eisenhower issued a new Executive order on industry security assuring confrontation to the employees of private contractors in most cases. Loren K. Olson, then general counsel of the Atomic Energy Commission, and now a commission member, tried to get the order extended to Government employees. It was not so extended.

Right in Passport Cases

The State Department last January, for the first time in any internal security screening program, gave, in its regulations barring passports to members of the Communist party, the absolute right to accused persons to confront and cross-examine their accusers.

The right of confrontation and cross-examination accorded to its employees and job applicants by the A.E.C. is not absolute. An exception is when the head of the department supplying the information certifies that the person who gave it has been engaged in obtaining intelligence information for the Government and that disclosure of his identity would be substantially harmful to the national interest.

Another exception can be made when the commission decides that the information seems reliable and material and failure of an investigating board to receive it would be substantially harmful to the national security but the person providing it cannot appear to testify because he is dead or sick or "due to some other cause determined by the commission to be good and sufficient."

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| 2 | General Counsel | | | |
| 3 | DDCI | | | |
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| | ACTION | DIRECT REPLY | | PREPARE REPLY |
| | APPROVAL | DISPATCH | | RECOMMENDATION |
| | COMMENT | FILE | | RETURN |
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FORM NO. 237 Replaces Form 30-4
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| 2 | Deputy Director of Central Intelligence Room <input type="text"/> | <input type="text"/> | 2/1 |
| 3 | ER | <input type="text"/> | |
| 4 | | | |
| 5 | | | |
| 6 | | | |
| ACTION | DIRECT REPLY | PREPARE REPLY | |
| APPROVAL | DISPATCH | RECOMMENDATION | |
| COMMENT | FILE | RETURN | |
| CONCURRENCE | INFORMATION | SIGNATURE | |
| Remarks: <i>Noted LBC</i> | | | |
| <i>Thanks</i> <i>JK</i> | | | |
| FOLD HERE TO RETURN TO SENDER | | | |
| FROM: NAME, ADDRESS AND PHONE NO. | | DATE | |
| Director of Security <input type="text"/> | | 5/25/62 | |

Approved For Release 2003/04/25 : CIA-RDP80B01676R003100250044-5

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